

MOTION FILED
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No. 90-1912

IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax
Assessor for Los Angeles County and the
COUNTY OF LOS ANGELES,

Respondents.

**On Petition for Writ of Certiorari to
To The Court Of Appeal
Of The State Of California**

**MOTION OF THE LEAGUE OF WOMEN VOTERS OF
CALIFORNIA FOR LEAVE TO FILE BRIEF AS AMICUS
CURIAE IN SUPPORT OF PETITIONER AND BRIEF OF
THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA
AS AMICUS CURIAE IN SUPPORT OF PETITIONER**

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**MOTION FOR LEAVE TO FILE
BRIEF AS AMICUS CURIAE**

The League of Women Voters of California (the "League") respectfully moves for leave to file the attached brief as *amicus curiae* in this case. Petitioner's attorneys have consented to the filing of this brief, and a copy of the consent has been filed with the Court. The consent of the attorneys for the respondents was requested, but refused.

The League is a nonprofit, nonpartisan organization open to all men and women. Since 1920, the League has dedicated itself to the goal of achieving fair and equal treatment for all people. The League has been closely involved with the many issues surrounding Proposition 13, the subject matter of this case, since 1977. The League brings to bear on the subject the unique perspective of a broad-based organization with expertise in the area of government institutions and the political process.

Without burdening the Court, the League seeks to raise issues not yet clearly developed by the parties or by other *amici*. First, the League believes that unless the Court grants certiorari *in this case*, the issue may go without resolution for a substantial length of time because of political pressures that prevent a voter solution, a legislative resolution, and, to some extent, a judicial remedy. Second, the League wishes to bring to the Court's attention additional factual information that became available after the filing of the Petition for Writ of Certiorari in this matter, and that might otherwise not be brought to the Court's attention. If the League's points are not allowed to be expressed at this stage of the proceeding, fundamental issues of great importance to the

League, its members, and millions of property owners in California might be decided without a proper discussion of the issues.

For these reasons, the League requests leave to file this brief as *amicus curiae* on behalf of petitioner and in support of the granting of certiorari in this case.

Respectfully submitted,

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I.

STATEMENT OF INTEREST AND
SUMMARY OF ARGUMENT

This case involves a challenge to the validity of Section 2(a) of California's Proposition 13. Its outcome will have a very real impact on millions of Californians.¹ The League of Women Voters of California (the "League") seeks to bring two matters not fully raised by the parties herein to the attention of the Court: (1) the fact that judicial redress from this Court in this case is the only realistic remedy for the gross inequities created by Proposition 13; and (2) the very recent findings of the California Senate Commission on Property Tax Equity and Revenue regarding these inequities.

A. Statement of Interest.

The League is a nonprofit, nonpartisan organization open to all women and men. Since 1920, the League has promoted informed and active citizen participation in government. A multi-issue organization, the League's voice has been heard on a full slate of issues, including voting rights, education, housing, child care, and campaign and initiative reform. Throughout the years, the League has worked as a "political watch

¹ Proposition 13 was a State Constitutional Amendment, adopted in 1978 through the so-called "Jarvis-Gann" initiative, which added Art. XIII A to the California Constitution. The operation of Proposition 13 has been set forth in detail by petitioner and will not be repeated herein. See *Nordlinger* Petition, *passim*. Like petitioner, the League does not challenge the right of the people to limit the level of taxation imposed by a state—the principal objective of Proposition 13. Rather, like petitioner, the League argues that Section 2(a) unconstitutionally allocates this tax burden among taxpayers.

dog" towards a single goal: fair and equal treatment for all people.

In the spring of 1977, the League took part in a comprehensive study of assessment practices and the role of property taxes. The resulting consensus was that property taxes should be broad-based, equitably allocated, and uniformly applied so that all property owners bear their fair share of the burden. Because Proposition 13 undermines these ideals, the League campaigned against it when it appeared on the June 1978 ballot. The League was unsuccessful, and what it feared became a reality: similarly situated taxpayers are being taxed at grossly different rates. Although not a politically popular position, the League today, as it did thirteen years ago, seeks to eliminate the unfair and inequitable aspects of Proposition 13.

B. Summary of Argument.

Although born out of a "taxpayer revolt" in 1978 to reduce the amount of what were perceived to be unfair property taxes imposed on property owners, there is no doubt today that Proposition 13 has created a very unfair and inequitable system of taxation. There is nothing fair or equitable in requiring a new property owner to pay 10, 15, 17, and even 583 times more property taxes than his or her neighbors solely because the neighbors have owned their property for a longer period of time. Indeed, already burdened by higher mortgage costs, as well as ever-increasing development fees imposed by local governments, these newcomers are the least able to carry this disproportionate tax load. In light of these injustices, and with all deference to the Court and its heavy workload, the League seeks to bring two important points

before the Court that otherwise might not be fully briefed.

First, the political realities are such that unless the Court grants certiorari in this case, the issue may go unresolved for a long time. At any given time, there will always be a majority of property owners who will gain, today or in the future, from shifting an unfair portion of the tax burden to relative newcomers. Thus, a political solution is not practical. Further, since Proposition 13 is an amendment to California's Constitution, a legislative solution is highly unlikely without a Court declaration that Section 2(a) is unconstitutional. Obtaining a judicial resolution is also difficult, as shown by the previous withdrawal of the case before this Court that raised these issues. See *R.H. Macy & Co., Inc. v. Contra Costa County*, (No. 90-1603). Petitioner has exhausted her appeals in the California Courts, making this case ripe for review.²

Second, so obvious are the disparities in treatment caused by Proposition 13, that the California Senate Commission on Property Tax Equity and Revenue very recently recommended both the elimination of

² See *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 275 Cal. Rptr. 684 (1990) (denying petitioner's challenge). Petitioner *Nordlinger* petitioned the State Supreme Court for review of the court of appeal decision, and that petition was denied on February 28, 1991. While the California appellate court recognized that there is no practicable political remedy for this form of discrimination, which inherently advantages the majority of present voters over the voters of the future, it nonetheless rejected petitioner's challenge to this discrimination. See *Nordlinger v. Lynch*, 225 Cal. App. 3d at 1282 n.11 ("It is questionable, however, whether a majority of the electorate ever will be sufficiently aggrieved to repeal Article XIII A's acquisition value assessment method").

the "substantial inequities" created by Proposition 13 and certain alternatives to Proposition 13's discriminatory effects in the event this Court declares the law unconstitutional.³ In this Brief, the League will highlight certain portions of this Senate Report, a report that both finds Proposition 13 to be unfair and inequitable and lays the foundation for the creation of a more equitable system of property taxation. Thus, should this Court accept certiorari and strike down Section 2(a) of Proposition 13, the Senate Report makes it clear that many alternatives to these inequitable methods of taxation exist and that the Senate stands ready to attempt to implement a fair, equitable, and constitutionally acceptable method of property taxation in California.

³ In June of 1991, the Commission issued its report, finding that Proposition 13 "has generated *substantial inequities* for property taxpayers," "does not correct or equalize" these inequities, and "offend[s] a policy of equal taxation." *Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate, passim* (June 1991) (the "Senate Report") (emphasis added). The Senate Report thereafter sets forth its recommendations for the creation of a fair and equitable system of taxation. *Id.* A copy of the Senate Report has been lodged with the Clerk of the Court. In Resolution 42, wherein the Senate created the Commission, the Senate noted that: "Immediately upon the passage of Proposition 13, disparities were recognized in the treatment of homeowners and commercial property owners in similar situations who had purchased homes at different time periods and . . . this disparity has increased over time and . . . California's system of tax assessments may result in property tax payments which fall heavily upon young families, many of whom already have difficulty in purchasing the median priced California home." Senate Report, Appendix A.

II.

ARGUMENT

Originally enacted to reduce a perceived unfairness in California's property tax system, Proposition 13 has itself created a grossly unfair and inequitable system of taxation in California. Under this system, those who have owned property since 1975 have escaped their fair share of the State's tax burden while those who later purchased property have been forced to subsidize the former group on an ever-increasing scale. Fairness and equity have vanished and, absent action by this Court, will likely not return for some time.

A. THE POLITICAL AND LEGISLATIVE PROCESS WILL NOT ELIMINATE THE INEQUITIES OF PROPOSITION 13, AND THE JUDICIAL PROCESS OFFERS ONLY A LIMITED REMEDY.

This case offers a unique opportunity for the Court to resolve the inequities caused by Proposition 13. In fact, there are no other meaningful remedies available because of the unusual political issues surrounding Proposition 13. There is little or no likelihood of a political solution to the inequalities caused by Proposition 13. While a substantial number of people are aggrieved at any one time, these newcomers to the property tax system are a minority when compared with the more favorably treated people who have owned their properties for some time. In addition, the newcomers foresee the time when they will become a more favorably treated class, at least with respect to those who enter the system at a later time. Thus, Proposition 13 insidiously offers to every tax-

payer an incentive to keep what is otherwise recognized to be an unfair system.⁴

Legislative reform is also problematic. Proposition 13 is a part of the California Constitution. Even if the members of the Legislature were willing to challenge the voters who see personal benefits in keeping an admittedly unfair system, arguably an act equivalent to political suicide, they are powerless to do so absent a constitutional amendment (an unlikely event at best).

Finally, it is very difficult to obtain judicial relief. A challenger must first be prepared to exhaust the state court system in California, as the petitioner has done in this case. But even then, the challenger must be prepared to stand up to the enormous pressure that can be brought to bear on the poor soul who dares to threaten those who are receiving benefits under Proposition 13 at the expense of others. So powerful is such pressure that the challenger who first brought this matter before the Court quickly succumbed and withdrew its apparently successful lawsuit when threatened with a boycott of its stores.

⁴ The Senate Report recognizes this problem:

Property tax equity, like beauty, is in the eyes of the beholder, that is, the beholder of his or her tax bill. Generally speaking, property taxpayers in California think Article XIII A of the California Constitution (Proposition 13) with its constitutionally guaranteed low tax rate and capped annual assessment is lovely indeed, albeit unfair.

Senate Report, at 2. For this reason, the Report found "many taxpayers are lulled into accepting an inequitable tax structure." *Id.*

See R.H. Macy & Co., Inc. v. Contra Costa County, (No. 90-1603)(Petition dismissed June 23, 1991) (1991 U.S. Lexis 4040).⁵ Only a very special and tough challenger can pursue these issues all the way to (and through) this Court. Fortunately, such a challenger is before the Court now, and this opportunity should not be lost.

B. THE RECENT REPORT OF THE CALIFORNIA SENATE COMMISSION ON PROPERTY TAX EQUITY AND REVENUE PROVIDES FACTUAL MATTERS OF IMPORTANCE TO THE COURT.

After the Petition for a Writ of Certiorari was filed in this case, the California Senate Commission on Property Tax Equity and Revenue issued a special report.⁶ The League wishes to bring to the Court's attention important matters disclosed in that report that otherwise would not be before the Court. The

⁵ As noted in the press: "Macy's came in for a ton of criticism from the business community, which on the whole gets a big tax break from Proposition 13, and from homeowners, who threatened to boycott Macy's stores. Last Friday the retailer withdrew its case. Proposition 13 was bigger than Macy's." *Los Angeles Times*, June 12, 1991, at B6, col. 3. Petitioner *Nordlinger*, an individual, is not subject to this pressure. Moreover, unlike *Macy's* petition, which presented for review a tax differential of only 2.5:1 for similarly situated properties, petitioner *Nordlinger* has cited examples of tax disparities as high as 583:1. *See Nordlinger* Petition, at 20-21. Also unlike *Macy's* Petition, petitioner *Nordlinger* does not attempt to distinguish between different kinds of property as Proposition 13 makes no such distinction. Thus, unlike *Macy's* Petition, the *Nordlinger* case raises the unfair impact of Proposition 13 on millions of residential homeowners, residential income producing property owners, and commercial owners.

⁶ *See* footnote 3, *supra*.

following is a summary of some of the more important findings of the Senate Commission.

1. Property taxes were first imposed in California in 1850 and, in 1977 (the year before Proposition 13), property taxes accounted for 40 percent of local revenues in the State.⁷ Senate Report, at 17. Over the years, property taxes were the mainstay of local government, yielding \$11.5 billion for schools and local governments in 1977-78 alone. *Id.* at 21.

2. In the decade before Proposition 13, property tax levies grew at a rapid pace—averaging 11.5 percent a year from 1967-72. Senate Report, at 23. The increases created a large group of irate property owners who received tax bills that were double or even triple those from previous years. The problem was not just that assessments were rising faster than inflation, but that local governments failed to lower property tax rates in response to these increases—a situation that resulted in huge revenue windfalls. At the same time, the State projected a record breaking General Fund surplus for fiscal 1977-78. *Id.* at 25.

3. To attempt to address this situation and reduce the tax burden on California citizens, several tax relief bills were introduced in the 1977 Legislative Session, all of which failed. *Id.* A “voter’s revolt” initiative, Proposition 13, was then placed on the June 1978 ballot as a proposed solution. Although the League campaigned against it, Proposition 13 was ap-

⁷ Senate Report, at 17. Then, as now, the California Constitution required that all property within the state “be taxed in proportion to its value.” Cal. Const. Art. 13, § 1. “Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.” Cal. Const. Art. 13, § 2.

proved by the voters and became Article XIII A of the California Constitution.⁸

4. It is undeniable that Proposition 13 has created great disparity in the levels of taxation between similarly situated taxpayers.⁹ A sampling of owner-occupied homes on the 1988 assessment rolls by the State Board of Equalization indicated that about 2 million homes had a 1975 acquisition base year. Senate Report, at 33. Owners of these homes paid only 25 percent of the property tax—about \$1.05 billion in taxes in 1988-89. The remaining 2.5 million homeowners paid 75 percent of the property tax—\$3.15 billion in taxes. *Id.* Thus, after only thirteen years of Proposition 13’s operation, long-time homeowners already carry roughly one-quarter of the tax load while the other half, the state’s new homeowners, bear

⁸ Like petitioner, the League does not challenge the right of the people to enact legislation via an initiative. However, laws enacted directly by the people, like any other, are subject to constitutional scrutiny. As stated by this Court in *Lucas v. Colorado General Assembly*, 377 U.S. 713 (1964): “A citizen’s constitutional rights can hardly be infringed simply because a majority of the people choose that it be. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause. . . .” *Id.* at 736-37.

⁹ The studies conducted by petitioner demonstrate multiple examples of the wide disparity of taxes paid by long-time property owners versus recent owners. *Nordlinger* Petition, at 14-15. The studies also show that wealthier homeowners tend to receive the greatest benefits under Proposition 13, both absolutely and percentage wise. *Id.* As the records in both this case and the *Macy* case indicate, differentials of over 2,000% will be common before the end of this decade if current trends continue. See *Nordlinger* Petition, at 14; *Macy* Petition, at 4.

nearly three-quarters of the load. *Id.* This disparity will only continue to increase in future years.¹⁰

5. The immediate effect of Proposition 13 on California taxpayers was a substantial reduction of their property tax bills. Senate Report, at 26; *Nordlinger* Petition, at 8. The immediate effect of Proposition 13 on local governments was a dramatic loss of revenue. In the fiscal year following the enactment of Proposition 13, local governments faced revenue losses of approximately \$7 billion—an amount equal to 57 percent of property tax revenues and 22 percent of local revenues from all sources. Senate Report, at 28. As a result, the Legislature was forced to adopt a “massive emergency fiscal assistance plan for local governments.” *Id.* This “bail out” was available only because of the large surplus accumulated in the General Fund. That surplus soon dwindled, and for the fiscal year 1991-92 the State faced a \$14 billion deficit. *Id.*, at 3.

6. The results of this loss of revenue are two-fold: (1) California’s infrastructure is deteriorating and becoming more inadequate with the passage of every day (*id.*, at 47); and (2) the burden of attempting to address these inadequacies is increasingly being placed on newcomers (*id.*, *passim*). Moreover, faced with a cap on taxation rates, local governments are continually looking for new ways to raise additional revenue, often at the expense of the newcomer. For

¹⁰ The unfairly discriminatory effects of Section 2(a) have been magnified by legislative and administrative actions. See the *Amicus Curiae* brief of The Building Industry Association of Southern California, Inc. in support of petitioner, at 11-17, for a discussion of these inequities.

example, since the passage of Proposition 13, “the widespread increase in developer fees (estimated now at \$3 billion annually) has been used by local governments as a source of local revenue.”¹¹ These fees, of course, are paid solely by newcomers.

7. The situation is equally dire for the new business owner. Like the homeowner, the business owner must pay a much higher price for his or her property than his or her long-standing competitor, he or she may be required to pay huge developer fees, and he or she must bear a vastly higher property tax payment than his or her long-standing competitor. The new business owner must then either pass the higher taxes on to his or her customer (and hence charge more than his or her long-time competitor) or reduce any profits he or she would otherwise realize. Neither outcome is a welcome result.

8. All of these burdens, of course, fall on those least able to bear this burden—the newcomers. The newcomers will pay the highest price for a house or business in the neighborhood (and thus a higher mortgage payment), pay the passed-on costs of substantial developer fees, and then, on top of all of this, pay 10, 15, 17, or even 583 times the property taxes of his or her neighbor. The newcomers, whether young people, immigrants, military personnel, or relocated

¹¹ Senate Report, at 48. In some areas, developer fees have reached \$14,000.00 for even modest homes. See Bay Area Council, *Taxing the American Dream: Developer Fees & Housing Affordability in the Bay Area*, at 3 (1988). These fiscal constraints not only suggest that local officials are more likely to approve developments that are high revenue generators, but that, when homes are built, the price of these few homes is greatly increased. See Senate Report, at 48.

employees, must carry this burden even though they never had the opportunity to purchase a home or business at the time of the previous low assessment, will never have the opportunity to join the class of low assessment taxpayers, and will never have their tax payments equalized over time with the taxes of the low assessment group.

As this Court has noted, permitting "states to divide citizens into expanding numbers of permanent classes . . . could produce nothing but discord and mutual irritation." *Zobel v. Williams*, 457 U.S. 55, 64 & n.12 (1982). This is a good description of the situation today in California, and there could scarcely be a clearer example of legislation which, without any justification other than "I got here first," discriminates between similarly situated citizens. Such a law will not stand up to constitutional scrutiny,¹² and this

¹² This result would be consistent with *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), wherein this Court unanimously held that for a state to tax owners of recently acquired properties at fair market value while taxing "neighboring comparable property which has not been recently sold . . . at only a minor fraction of that figure" violated the Equal Protection Clause. *Id.* at 342. To pass constitutional scrutiny, "the seasonal attainment of a rough equity in tax treatment of similarly situated property owners" was required. *Id.*, at 343. Review is thus proper under Sup. Ct. R. 10.1(c). This case, much more than *Allegheny*, however, is of great national importance. California has committed itself through its State Constitution to a method of taxation that is inherently discriminatory against newcomers. Unless Section 2(a) is reviewed and overturned by this Court, there will be a massive, systematic, multi-billion-dollar redistribution of wealth from some owners of California property to others, growing continuously more severe, based on no discernible principle of justice, efficiency, or tax equity. Also, and although not raised by petitioner, the League believes that

Court should subject Proposition 13 to such an examination.

III.

CONCLUSION

It is undeniable that Proposition 13 has created a grossly unfair and inequitable system of taxation in California. Unfortunately, the political reality of Proposition 13 is that neither the voters nor the Legislature or, for that matter, even the State courts, will provide a remedy for this system of taxation. It is precisely this situation which warrants the attention of this Court. This Court has held that "rough equality," not artificial distinctions, such as duration of residency, must be utilized by a State when it places different burdens on similarly situated citizens. This Court is being asked to require the State of California to do the same here—no more, no less. It is therefore respectfully requested that this Court grant a hearing

Nollan v. State Coastal Commission, 483 U.S. 825 (1987), is instructive. In *Nollan*, this Court found that singling out one property owner or group of owners to address a general problem was unconstitutional. Such is also the case here. Proposition 13 singles out new property owners to bear a disproportionate burden of the State's tax needs, a classic example of what *Nollan* prohibits—the government "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." 483 U.S. at 835-36 n.4.

in this case, and declare Section 2(a) of Proposition 13 unconstitutional.

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